

**ANTICIPATED MERGER OF THE ROYAL BOURNEMOUTH AND
CHRISTCHURCH HOSPITALS NHS FOUNDATION TRUST AND POOLE
HOSPITAL NHS FOUNDATION TRUST**

**Notice of acceptance of Final Undertakings pursuant to section 82 of and
Schedule 10 to the Enterprise Act 2002**

1. On 8 January 2013, the Office of Fair Trading (OFT) referred the anticipated merger of The Royal Bournemouth and Christchurch Hospitals NHS Foundation Trust (RBCH) and Poole Hospital NHS Foundation Trust (PH) (the merger) to the Competition Commission (CC) for investigation and report under section 33 of the Enterprise Act (the Act).
2. In its *Report on the anticipated merger of The Royal Bournemouth and Christchurch Hospitals NHS Foundation Trust and Poole Hospital NHS Foundation Trust* (the Report) dated 17 October 2013, the CC concluded that:
 - (a) the anticipated merger by RBCH and PH may be expected to result in the creation of a relevant merger situation;
 - (b) the creation of that situation may be expected to result in a substantial lessening of competition (SLC) in the Dorset area in respect of:
 - (i) 19 elective inpatient services and 33 outpatient services;
 - (ii) inpatient and outpatient maternity services; and
 - (iii) private inpatient cardiology services; and
 - (c) the CC should take action to remedy the SLCs and the effects flowing from them by way of prohibition as outlined in Section 10 of the Report.
3. The CC published a notice of proposal to accept Undertakings on 20 November 2013. No representations were received, and the CC has decided to accept Undertakings in the form set out in the attached annex.
4. The CC under section 82 of the Act now accepts the Undertakings as given by RBCH and PH. The reference has now been finally determined and the Undertakings come into force accordingly.
5. The acceptance of these Undertakings has the effect that RBCH and PH may not merge (or otherwise cease to be distinct) without the prior written consent of the relevant competition authority. The Undertakings may be varied, superseded or released by the CC under section 82(2) of the Act.
6. This notice and a non-confidential version of the Undertakings will be published on the CC website.

(signed) Roger Witcomb
Group Chairman
19 December 2013

**ANTICIPATED MERGER OF THE ROYAL BOURNEMOUTH AND
CHRISTCHURCH HOSPITALS NHS FOUNDATION TRUST AND POOLE
HOSPITAL NHS FOUNDATION TRUST**

**Final Undertakings given to the Competition Commission by The Royal
Bournemouth and Christchurch Hospitals NHS Foundation Trust and Poole
Hospital NHS Foundation Trust**

On 8 January 2013, the Office of Fair Trading (OFT) referred the anticipated merger of The Royal Bournemouth and Christchurch Hospitals NHS Foundation Trust (RBCH) and Poole Hospital NHS Foundation Trust (PH) (the merger) to the Competition Commission (CC) for investigation and report under section 33 of the Enterprise Act (the Act).

The CC published *A report on the anticipated merger of The Royal Bournemouth and Christchurch Hospitals NHS Foundation Trust and Poole Hospital NHS Foundation Trust* (the Report) on 17 October 2013.

The Report concluded that:

- (a) the anticipated merger of RBCH and PH may be expected to result in the creation of a relevant merger situation;
- (b) the creation of that situation may be expected to result in a substantial lessening of competition (SLC) in the Dorset area in respect of:
 - (i) 19 elective inpatient services and 33 outpatient services;
 - (ii) inpatient and outpatient maternity services; and
 - (iii) private inpatient cardiology services; and
- (c) the CC should take action to remedy the SLCs and the effects flowing from them by way of prohibition as outlined in Section 10 of the Report.

RBCH and PH hereby give to the CC the following undertakings under section 82 of the Act for the purpose of remedying the SLCs identified in the Report and the adverse effects which flow from them.

1. Commencement and duration

- 1.1 The Undertakings shall commence on the Commencement Date and shall continue in force until the date ten years from the Commencement Date, unless the Undertakings are varied, released or superseded under the Act.

2. Prohibition of the merger

- 2.1 Except with the prior written consent of the Relevant Competition Authority, RBCH and PH each undertakes not to:
 - 2.1.1 apply for or implement a merger within the meaning of section 56 (Mergers) of the National Health Service Act 2006, as amended by section 168 of the Health and Social Care Act 2012, of their respective organizations; or

2.1.2 apply for or implement an acquisition by RBCH of PH, or by PH of RBCH, within the meaning of section 56A (Acquisitions) of the National Health Service Act 2006, as inserted by section 169 of the Health and Social Care Act 2012.

2.2 RBCH and PH recognize that the undertakings in paragraph 2.1 shall continue to apply regardless of who controls or has an interest in RBCH or PH.

3. Compliance

3.1 Each of RBCH and PH undertakes to comply with such written Directions as the CC or the OFT may from time to time (acting reasonably) issue to take such steps within their competence for the purpose of carrying out or securing compliance with these Undertakings.

4. Provision of information to the CC and the OFT

4.1 Each of RBCH and PH undertakes to provide to the CC promptly such information as the CC may reasonably require for the purpose of performing any of its functions under these Undertakings or under sections 82, 83 and 94(7) of the Act.

4.2 Each of RBCH and PH undertakes to provide to the OFT promptly such information as the OFT may reasonably require for the purpose of performing any of its functions under these Undertakings or under sections 92, 93(6) and 94(6) of the Act.

5. Effect of invalidity

5.1 Should any provision of these Undertakings be contrary to law or invalid for any reason, each of RBCH and PH undertakes to continue to observe the remaining provisions.

6. Governing law

6.1 Each of RBCH and PH recognizes and acknowledges that these Undertakings shall be governed and construed in all respects in accordance with English law.

6.2 In the event that a dispute arises concerning these Undertakings, each of RBCH and PH undertakes to submit to the courts of England and Wales.

7. Termination

7.1 Each of RBCH and PH recognizes and acknowledges that the variation, release or supersession of these Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

8. Interpretation

8.1 Words and expressions defined in the recitals to these Undertakings shall have the same meaning in these Undertakings.

8.2 The headings used in these Undertakings are for convenience and shall have no legal effect.

- 8.3 Expressions in the singular include the plural and vice versa and references to persons include corporations.
- 8.4 References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise.
- 8.5 References to recitals, paragraphs, subparagraphs and annexes are references to the recitals to, paragraphs and subparagraphs of and annexes to these Undertakings.
- 8.6 For the purposes of these Undertakings and the annexes, the following terms mean:

the Act	means the Enterprise Act 2002;
CC	means the Competition Commission and any successor body;
Commencement Date	means the date on which these Undertakings are accepted by the CC;
OFT	means the Office of Fair Trading and any successor body;
PH	means Poole Hospital NHS Foundation Trust;
RBCH	means The Royal Bournemouth and Christchurch Hospitals NHS Foundation Trust;
Relevant Competition Authority	means the OFT if consent is provided prior to 31 March 2014 and the Competition and Markets Authority if consent is provided after that date;
Report	means the report published by the CC on 17 October 2013 titled <i>A report on the anticipated merger of The Royal Bournemouth and Christchurch Hospitals NHS Foundation Trust and Poole Hospital NHS Foundation Trust</i> ; and
Undertakings	means these Undertakings given by RBCH and PH for the purpose of remedying the SLC identified in the Report.

FOR AND ON BEHALF OF The Royal Bournemouth and Christchurch Hospitals NHS Foundation Trust

Signature

Title

Date

Signature

Title

Date

FOR AND ON BEHALF OF Poole Hospital Foundation Trust

Signature

Title

Date

Signature

Title

Date